Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WT Docket No. 06-150
Service Rules for the 698-746, 747-792	)	
and 777-792 MHz Bands	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Sections 68.4(a) of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones	)	

To: The Commission

COMMENTS OF CORR WIRELESS COMMUNICATIONS, LLC

Corr Wireless Communications, LLC ("Corr") submits these comments with respect to the Commission's proposal to modify certain aspects of the 700 MHz regulatory regime.[1] While some of the proposed changes would bring useful clarification to the obligations of 700 MHz licensees, other proposals would gravely undermine and impair the licenses already granted and should not be adopted under any circumstances.

Corr is a regional CMRS provider serving north Alabama and adjacent counties. It was an original buyer of twelve C block licenses in the lower 700 MHz

[1] *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 Bands*, FCC 06-114, released August 10, 2006.

band in the first auction in 2003.[2] Since its acquisition of these licenses, Corr has been exploring possible uses of the band with equipment vendors and other suppliers. It is vitally interested in any changes in the regulatory scheme for this band which would impact its potential uses and potential value. It is also interested in ensuring that additional spectrum in this band is reasonably available to local and regional carriers like itself. From this perspective, Corr offers the following comments to the Commission's proposals.

I. Smaller Service Areas Will Make the Spectrum Available to More Users

The Commission seems to have recognized that auctioning spectrum in huge geographic areas is not a good idea. As presently structured, the remaining 700 MHz spectrum is only available in EAGs which cover large swaths of the United States. As a practical matter, the purchase of spectrum on this order would be limited to only the very largest carriers, thus cutting out all small carriers and most legitimate designated entities and small businesses who might hope to compete in this band. History has also shown that when spectrum is licensed on this vast a scale, the licensee cannot possibly build out the entire service area in any reasonable time frame, thus leaving much of the licensed area unserved. Partitioning and disaggregating such large licenses in the secondary market has also not worked to break the huge chunks into more manageable and useable parts. Spectrum should be auctioned in pieces that can be readily digested and managed.

[2] Corr subsequently assigned these licenses to its parent company, Corr, Inc., which also joins in these comments.

The best course is to allot one or two blocks on an EAG basis, simply to provide a potential competitive counterpoint to the EAGs which have already been auctioned off in the lower band. We would recommend redividing the present upper band C and D blocks into two 2 x 7.5 MHz (paired) blocks. One of these 15 MHz blocks would be licensed on an EAG basis, and the other on an REAG basis. The present A, B and E blocks in the lower band should then be made available on a CMA basis as the C block was originally auctioned. This mix would have several salutary effects. First, both large licenses and regional licenses would be available for firms contemplating either national or regional applications. The new EAG-based licensee could compete with the existing EAG licensees over similar ground. Carriers focusing on state-wide or regional plans would have the REAG alternative which is not currently available. Most importantly, smaller carriers like Corr who are focused on serving specific BTAs or metropolitan areas, would be able to acquire just enough spectrum to meet their geographic needs without having to buy excess area which they neither want nor can afford. The virtue of smaller CMA-sized blocks is that they are truly "building blocks" which can be combined in just the right amounts of spectrum and geographic area to meet the need perceived by the licensee. Corr, for example, could add capacity to its existing cellular, PCS and 700 MHz spectrum in the precise areas where it does business and plans to do business in the future. Many other smaller carriers have the same need – to add spectrum capable of delivering video and other advanced 3G features at reasonable cost.

As the Commission found with cellular, the best way to get a rapid roll out of service is to have hundreds of very interested licensees simultaneously working on developing the local markets they know best, drawing on diverse sources of capital, financing and technical expertise to get the job done. A nationwide, or even REAG-wide, rollout is likely to take far more time than intensive, market-specific rollouts, and will inevitably concentrate on skimming the cream of the REAGs rather than reaching all segments. The channel allocation proposed here will thus both contribute to diversity of ownership and also speed the implementation of build-out to sections of the country.

II. The License Period for All 700 MHz Licensees Should Be Ten years From the DTV Transition Date

The Commission noted that the development of the 700 MHz band has been delayed while policy-makers have wrangled over how and when the transition to DTV should be finalized. Until the band is cleared of existing broadcast users, there is little likelihood of wide-spread use of the band, and any use that does occur will be impeded by the need to protect co- and adjacent-channel broadcast stations. Corr therefore believes that, to be fair, existing 700 MHz licensees should have license terms extended to 10 years from the hard DTV transition deadline, Feb. 17, 2009. Recipients of new 700 MHz licenses would run from that same date (or later if, for some reason, their licenses were not granted by that date). This will allow all 700 MHz licensees the full ten-year term normally afforded by the rules to initiate and complete their build-outs and demonstrate substantial service to their territories.

III. The Commission Should Not Adopt Build-Out and Financial Disclosure Requirements

The fundamental premise that underlies the award of licenses by competitive bidding is that it puts the licenses in the hands of the firms which will put the licenses to their highest and best use. That is, sheer economic logic will compel the license holders to pay the highest price for the licenses consistent with a planned productive use, and then actually put the licenses to use in the way most likely to recover the license cost, plus some profit. The beauty of such a system is that it eliminates the need for close supervision by the Commission of how the licenses are being used; the "invisible hand" of economic logic will drive licensees to optimize the use of the licenses. In most cases, this will mean prompt build-out and provision of service, because without such service there can be no recoupment of capital. In a few cases, it might actually mean not building a market out until the equipment costs and market conditions were adequate to profitably allow service to commence. By letting the market work, the Commission will both avoid artificial build-outs in areas that cannot economically sustain service and also ensure the fastest possible build-out where economics so dictate. The Commission's proposals to require construction benchmarks, substantial service thresholds and negotiations with secondary market parties all run contrary to the remarkable efficiency of letting the invisible hand do its work.

In particular, Corr believes that the Commission's existing rules requiring the disclosure at renewal time of investment data, timetables for expansion, and other detailed operational information should be discarded, and the proposed rules

regarding disclosure of negotiations with secondary market proponents should not be adopted. There are a number of reasons why this is a misplaced concept. First, if the Commission adopts smaller CMA-based license areas, it is far more likely at the outset that licensees will build-out their areas without the need for disaggregation or partitioning. The size of the market itself facilitates expeditious build-out.

Second, the submission of detailed investment data and construction timetables to the Commission would be of dubious value, and at best constitute an undue burder on small businesses. . The Commission's staff is in no position to judge whether economic and business conditions in a particular market would allow construction of a particular system at a particular time. The investment information now required to be submitted would be meaningless in the absence of some broader framework for evaluating whether that level or any level of investment was prudent. Such judgments are what business fortunes are made and lost on, but it would be absolutely impossible for any financial oversight entity -- much less the Commission, which has no expertise in financial affairs -- to second-guess such determinations on a post-hoc basis and have the license renewal rise or fall on the outcome. The Commission is simply not qualified to render a competent judgment as to whether the licensee's investments were adequate or not for the particular business case presented. As noted above, once the Commission has issued the license to the bidder willing to pay the most for it, it should stand aside and allow the bid itself to compel the licensee to put the spectrum to remunerative

use. Demanding to review a company's financial information will add nothing to the process and may even deter firms from bidding who have no desire to have their financial judgments second-guessed by the Commission. Similarly, the timetable for construction is based on factors such as market conditions, interest rate trends, siting restrictions and other complex issues which the FCC could not possibly hope to evaluate as a basis for adjudging substantial use of a license. Again, the invisible hand of economics, stimulated by the auction process itself, should take care of all these issues on its own (as has been the case in the past).

Third, the Commission proposes to foster greater use of the licensed spectrum by encouraging secondary market arrangements. This would be done obliquely by requiring reporting on negotiations by third parties seeking to partition or disaggregate spectrum. To be sure, we have found that partitioning and disaggregation has not occurred as much as one would like so as to allow use of parts of giant spectrum blocks which are going unused. But this problem would be largely solved by avoiding the use of huge spectrum and geographic blocks in the first place, as outlined above. Moreover, detailed monitoring by the Commission of business negotiations between private parties is not only highly unusual but would serve more to stifle the flexibility of the parties involved rather than leading to any meaningful additional spectrum use.

Fourth, any such performance-based restrictions, particularly those which envision regulators peering over the shoulders of management people and judging the worthiness of their efforts, can only have a dampening effect on the enthusiasm

of parties to bid for these licenses. By hamstringing potential licensees with artificial build-out and reporting constraints, the Commission will certainly generate a far smaller yield in the auction. The more they appear to be tied up in regulatory red-tape, the less the licenses will be worth.

Most significantly, the imposition of complex and unpredictable renewal criteria based on vague factors like investment amounts, willingness to negotiate in the secondary market, construction timetables which may or may not be acceptable to regulators who do not themselves know the market, etc. casts a dark cloud over the renewability of 700 MHz licenses, and that shadow falls most heavily on the financial community. The main thing the investment community cannot abide is uncertainty, and the Commission's current and proposed renewal procedures create exactly that. Such uncertainties at best raise the cost of investment capital unnecessarily and at worst could severely impede the ability of carriers to raise the large amounts of capital which will be needed to build out these systems.

IV. The Commission May Not Reduce Power Authorized for Existing Lower Band Licensees

The Commission asked for comment on whether the current 50 kW ERP power limitation in the lower 700 MHz band should be reduced to 20, 10, 5 or even 1 kW. Corr considers this suggestion a gross breach of faith with licensees who relied on the specified power outputs in applying for, bidding on, and paying for, these licenses back in 2003. Corr believed at the time it bid on the licenses, and still believes, that there may be a viable use for these licenses in providing digital broadcast services to consumers. Potential services under active development

include mobile TV and one-way data transfers. With 50 kW of power, a licensee could provide such a broadcast service to a small or medium-sized metropolitan area.[3] This was one of the fundamental bases on which Corr bid on its licenses, and the reduction in power proposed now would destroy that potential entirely. At a stroke, the Commission would utterly undermine and eviscerate the value of the licenses it just auctioned. So gravely would this rule change impair the value of the licenses, there would almost certainly be a taking under the Fifth Amendment which would be compensable in the Court of Claims.[4] At the very least, if the Commission took a step which so grossly devalued licenses which it had just sold, there would be a great pall cast over all licenses issued by the Commission – they would not be worth the paper they are printed on, and the investment community would hesitate to support bids on licenses which could so readily be devalued. Having duly auctioned the lower band licenses under Congressional mandate and having been paid millions for those licenses, the Commission now seems to want to

[3] In this connection, Corr notes that the Commission has perceived a disconnect between the statutory license period for broadcast stations and the license periods available for non-broadcast licenses. We believe the solution is to require 700 MHz licensees to report to the Commission when they initiate broadcast operations. Their license period would be limited to the shorter of (i) their remaining license period or (ii) eight years from the date they begin broadcast operations. Such an approach would fully meet the mandate of the Act that broadcast licenses not exceed 8 years.

[4] *Mobile Relay Associates, et al. v. FCC*, No. 04-1413, DC Cir. July 14, 2006, notwithstanding, we do not see how the Commission could auction licenses with full power broadcast capability to the public and then promptly remove that capability without this constituting a compensable taking.

renege on the commitment it made to bidders who in good faith paid for the licenses.

Beyond the manifest injustice and probable unconstitutionality of the taking inherent in such a power reduction, there is no basis in the record for such a suggestion. Existing licensees are bound by the specified PFD limits at their borders, so there is no likelihood of interference to other co- or adjacent channel licensees whatsoever. Nor is there any benefit to be gained by "providing uniform treatment across the band" of authorized power levels. *NPRM* at para. 97. There is no reason at all why different bands licensed at different times for different purposes need to have uniform power levels, so long as all licensees are protected from interference within their own service areas. Indeed, the mere fact that the Commission had specifically offered lower band bidders the rights to operate at 50 kW is a perfectly valid reason to differentiate those licenses from licenses which did not come with such an offer and have never had an expectation of operating at that level. Here uniformity would be more a vice than a virtue.

V. Two Sided Auctions Are a Useful Experiment

The Commission has considered "two-sided" auctions in other contexts, notably MDS/ITFS, but has never quite been able to pull the trigger and actually authorize such an auction. Corr believes such auctions are useful in circumstances where the spectrum in a particular band has been fragmented by prior licensing policies and there is a need to consolidate it into larger chunks under a new band plan. That was exactly the situation presented by the MDS/ITFS spectrum; it is

less the case here where only three of the lower band 700 MHz blocks have been auctioned. Still, we see no harm in such an auction since it could conceivably permit new entrants into the band to be assured that they could consolidate spectrum in the band they particularly desire while also fairly dealing with incumbents. Though Corr has no intention of leaving the band, the proposed auction might permit less committed licensees to be weeded out, enhancing the value of the adjacent spectrum that would be bought directly from the Commission's inventory.

In order for such an auction to be fair, however, it would have to ensure that existing licensees could not be forced involuntarily from their licenses. To accomplish this, they could be allotted an unlimited bidding credit applicable only to their own existing license. This would ensure that they could outbid any other bidder if they desired not to forego their license but could also drop out of the bidding and be bound to sell out to the winning bidder if the bidding reached a level at which they wished to exit.

The way to make the process work would be to have the existing licensee essentially forfeit its license to the FCC in exchange for the money paid in by the winning bidder. (The license would obviously not be forfeited until the money was actually paid in.) The winning bidder would then acquire a perfectly clean license from the Commission. There would be no privity between the buying and selling parties and no need for the usual contractual representations and warranties which might otherwise be required. If there were any hard facilities associated with the

license, the buyer and seller could negotiate the transfer of those assets without Commission involvement.

VI. Conclusion

For the reasons set forth above, Corr believes the Commission should offer new 700 MHz spectrum in smaller geographic blocks, extend existing and new license terms to ensure that licensees have a full ten year period in which to establish substantial service, eliminate construction benchmarks, financial disclosures and other artificial incentives to put the spectrum to use, and provide for two-sided auctions. On the other hand, the Commission should not and must not betray existing licensees by radically reducing the authorized power from the levels promised in connection with the earlier auction.

Respectfully submitted,

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